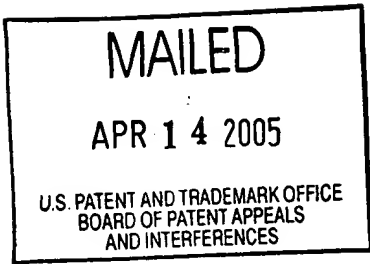


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAKOLLE WILLIAMS

Appeal No. 2005-0947
Application No. 09/919,534

ON BRIEF

Before FRANKFORT, MCQUADE and NASE, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

MaKolle Williams originally took this appeal from the final rejection (mailed June 5, 2003) of claims 1 through 28, all of the claims pending in the application. Upon consideration of the appellant's brief (filed December 30, 2003), the examiner issued an Office action (mailed April 2, 2004) reopening prosecution and entering superseding rejections of the claims. In response, the appellant submitted a supplemental brief (filed May 7, 2004) which in effect requested that the appeal be reinstated pursuant to 37 CFR § 1.193(b)(2)(ii). Implicitly granting the request,

the examiner entered an answer (mailed July 20, 2004) and forwarded the application to this Board for review of the new rejections of claims 1 through 28.

THE INVENTION

The invention relates to an adjustable paint roller. Representative claims 1 and 12 read as follows:

1. A paint roller, comprising:
 - (a) a handle having a first end and a second end;
 - (b) a shaft having a first end and a second end;
 - (c) a functional element secured to the second end of the shaft;
 - (d) a flexure joint interposed between and connecting the second end of the handle and the first end of the shaft, which includes:
 - (i) a spherical member,
 - (ii) a receiving member configured and arranged to maintain and selectively engage the spherical member, and
 - (iii) a connector in communication with the receiving member for releasably locking the spherical member in position as between at least a first locked position and a second locked position relative to the receiving member, and
- whereby repositioning of the spherical member as between the first and second locked positions is effective for repositioning the shaft relative to the handle as between a first locked position and a second locked position.
12. A paint roller, comprising:
 - (a) a handle having a first end and a second end;

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(b) a shaft having a first end and a second end;

(c) a functional element secured to the second end of the shaft; and

(d) attachment means interposed between and connecting the second end of the handle and the first end of the shaft which is configured to selectively position the functional element relative to the handle by providing a disengaged condition permitting repositioning of the shaft relative to the handle in at least two degrees of freedom, and an engaged condition preventing repositioning of the shaft relative to the handle, wherein the engaged condition can be achieved with the shaft in at least two different positions relative to the handle.

THE PRIOR ART

The references relied on by the examiner to support the rejections on appeal are:

Cline	365,329	Jun. 21, 1887
Cayo	3,408,676	Nov. 05, 1968
Ampian	5,207,755	May 04, 1993

THE REJECTIONS

Claims 1 through 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ampian in view of Cline.

Claims 1 through 28 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cayo in view of Cline.

Attention is directed to the supplemental brief and answer for the respective positions of the appellant and examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 103(a) rejection of claims 1 through 28 as
being unpatentable over Ampian in view of Cline

Ampian discloses an adjustable paint roller which is described in the reference as follows:

Referring to FIG. 1, the adjustable paint roller 10 of the present invention includes a handle 12, a U-shaped roller support mechanism 14, an elbow member 28 and a coupling member 16. The roller support mechanism includes a U-shaped support arm 18 including a spindle 20, forming one leg of the U-shaped support arm, to which a roller head 22 is rotatably supported and a base arm 24, forming the other leg of the support arm. The base arm 24 is rotatably attached to an upper elbow leg 26 of elbow 28 so that it can be rotated 360° about axis x-x. The other, lower elbow leg 30 of the elbow is rotatably secured to the upper end of coupling member 16 so that it can be rotated 360° about axis y-y. Finally, the lower end of the coupling member is rotatably secured to the handle 12 so that it can be rotated about the axis z-z. The handle includes a threaded bend hole 13 to allow [an] extension to be secured thereto as desired. Accordingly, it can be understood that the adjustable paint roller according to the present invention is adjustable about 3 axes (axis x-x; axis y-y; and axis z-z) enabling the roller head 22 to be arranged at any desired angle with respect to the handle 12. . . .

There are two types of lock mechanisms for locking the paint roller in the desired position. In particular, [a pair of] upper lock mechanisms 32 locks the U-shaped roller support mechanism 14 to the elbow upper elbow leg 26 and locks the lower elbow leg 30 to the coupling member 16. A lower lock mechanism 34 locks the coupling member 16 to the handle 12 [column 3, lines 24 through 57].

It is not disputed that the Ampian paint roller responds to all of the limitations in independent claims 1 and 12 except for

those in claim 1 relating to the flexure joint and those in claim 12 pertaining to the attachment means.¹ To account for these deficiencies, the examiner looks to Cline.

Cline discloses an attachment arrangement for use in conjunction with a brush-handle or a pump-rod. As described by Cline with reference to the drawing figure,

. . . A designates a split shank, or a shank made of two equal parts, B C. These parts taper from below upwardly, and are provided in the lower ends of their meeting faces with half seats D E, which, when the two parts B C are brought together, form the seat for the ball F on the stem I, that is inserted in the brush-body or in the upper end of the pump-rod, as the case may be.

G is a compensating screw which is designed to take up wear of the ball on the seats when necessary, a simple turn of the screw G being all that is required for this purpose. The two parts B C are externally threaded along what may be termed the "tang" portion of the shank, so that they may be screwed into a seat or nut, H, in the brush-handle or pump-rod. The stem I is provided with a shoulder, J, which limits the distance said stem is to be inserted into the brush-body or pump-rod, as the case may be. When the stem I grows a little loose the handle may be turned to tighten it [page 1, lines 24 through 45].

One of the threshold issues presented in the appeal concerns the scope of the Cline disclosure. In this regard, the appellant submits that (1) the attachment means described by Cline allows

¹ Presumably, the examiner views the recitation of the attachment means in claim 12 as a means-plus-function limitation and has construed such in accordance with 35 U.S.C. § 112, sixth paragraph.

relative movement of the brush and handle only about a single axis transverse to the gap between parts B and C and (2) Cline does not teach whether the attachment means can be locked to prevent movement about this axis (see, for example, pages 5 and 9 in the supplemental brief).

In considering the disclosure of a reference, it is proper to take into account not only the specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 159 USPQ 342, 344 (CCPA 1968). A person of ordinary skill in the art would have readily appreciated Cline's drawing figure as depicting an attachment means or joint which would permit relative movement about at least two axes: the axis transverse to the gap between parts B and C as noted by the appellant and the axis coincident with stem I. Such a person also would have appreciated the brush-handle or pump-rod environment of Cline's attachment means and Cline's description of compensating screw G and its purpose as indicating that the screw G is used to clamp seats D and E to ball F, thereby locking the attachment means in a fixed orientation. Hence, the fair teachings of Cline and the inferences reasonably expected to be drawn therefrom are not as limited as the appellant urges.

In proposing to combine Ampian and Cline to reject claims 1 and 12, the examiner concludes that it would have been obvious to provide an attachment arrangement of the sort disclosed by Cline between the shaft (14) and handle (12) of Ampian's paint roller "in order to provide better incremental adjustment of the shaft relative to the handle" (answer, page 5).

The appellant's contention that this reference combination is unsound is persuasive. The joint attaching the shaft (14) and handle (12) of Ampian's paint roller affords a much larger degree of adjustability than the joint disclosed by Cline. Consequently, the combined teachings of the references would not have provided the artisan with any incentive to replace or selectively modify the Ampian joint in view of Cline. The rationale advanced by the examiner, that the Cline joint would provide better incremental adjustment of Ampian's shaft relative to the handle, does not stand up to close scrutiny. Any enhancement of the Ampian paint roller in this regard would be negligible at best, and would not be perceived by the artisan as adding to the efficacy of Ampian's device. The only suggestion for modifying the Ampian paint roller in view of Cline so as to arrive at the subject matter recited in claims 1 and 12 stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Thus, the collective teachings of Ampian and Cline, as applied by the examiner, do not warrant a conclusion that the differences between the subject matter recited in claims 1 and 12 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1 and 12, and dependent claims 2 through 11 and 13 through 28, as being unpatentable over Ampian in view of Cline.

II. The 35 U.S.C. § 103(a) rejection of claims 1 through 28 as being unpatentable over Cayo in view of Cline

Cayo discloses an adjustable paint roll applicator comprising

a roll [1] receiving spindle [2] with a U-shaped bend [3] on one end, a first cupped stamping [8] with a flat annular flange [9] and a cylindrical side wall [10] with the free end [4] of the U-bend of the spindle extending therethrough, a second cupped stamping [11] opposed to the first with an annular flange [12] in frictional engagement with the first flange, a handle rod [6] extending through the cupped side of the second stamping, a pivot screw [14] extending through the centers of the two stampings and the interior ends of the handle rod and the U-bend of the spindle, an interior nut [22] clamping the end of the handle rod in the second stamping, a first exterior nut [16] clamping the stampings together and a lock nut [17] fixing the exterior nut in place [column 1, lines 12 through 25].

As was the case above with respect to Ampian, it is not disputed that the Cayo paint roller responds to all of the limitations in independent claims 1 and 12 except for those in claim 1 relating to the flexure joint and those in claim 12 pertaining to the attachment means. To cure these shortcomings, the examiner again looks to Cline and concludes that it would have been obvious to provide an attachment arrangement of the sort disclosed by Cline between the shaft (4) and handle (6) of Cayo's paint roller "in order to provide better incremental adjustment of the shaft relative to the handle" (answer, page 8). In contrast to the preceding rejection, the examiner's position here is well founded.

As discussed above, Cline's attachment means or joint would allow adjustment about at least two axes, i.e., the axis transverse to the gap between parts B and C and the axis coincident with stem I. The attachment means or joint between Cayo's shaft and handle permits adjustment about only one axis, i.e., that coincident with clamp bolt 14. The greater degree of adjustability of the Cline joint as compared to the Cayo joint would have furnished the artisan with ample suggestion or motivation to substitute the Cline joint for the Cayo joint in order to enhance the incremental adjustability of the Cayo paint roller. Indeed, this result would further Cayo's stated

objective of permitting "the handle to be located at the most convenient position and angle for moving the tool in a direction transverse to its line of contact with the surface, while maintaining the desired pressure of the tool on the surface and the necessary force for moving the tool along the surface" (column 1, lines 40 through 45). Thus, the appellant's contention (see pages 11 through 13 in the supplemental brief) that the proposed combination of Cayo and Cline rests on impermissible hindsight is unconvincing.

The appellant's additional argument that the Cayo and Cline combination would not meet each and every limitation in claims 1 and 12 because Cline's attachment means or joint allows relative movement only about a single axis and cannot be locked to prevent such movement also is unpersuasive for the reasons discussed above.

Thus, on the record before us, the combined teachings of Cayo and Cline justify the examiner's conclusion that the differences between the subject matter recited in claims 1 and 12 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Accordingly, we shall sustain the standing 35 U.S.C. § 103(a) rejection of claims 1 and 12 as being unpatentable over Cayo in view of Cline.

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We also shall sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 2 through 11 and 13 through 28 as being unpatentable over Cayo in view of Cline since the appellant has not challenged such with any reasonable specificity, thereby allowing these claims to stand or fall with parent claims 1 and 12 (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).


SUMMARY

Since one of the two rejections of claims 1 through 28 is sustained, the decision of the examiner to reject these claims is affirmed.

AFFIRMED

CHARLES E. FRANKFORT
Administrative Patent Judge


JOHN P. MCQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge

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SHERRILL LAW OFFICES
4756 BANNING AVE.
SUITE 212
WHITE BEAR LAKE, MN 55110-3205